

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Docket No: Q67594

Koichi HAGIWARA, et al.

Appln. No.: 10/006,568

Group Art Unit: 3752

Confirmation No.: 3469

Examiner: Christopher S. Kim

Filed: December 10, 2001

For: CLEANING AND RELEASING DEVICE

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated August 22, 2007. Entry of this Reply Brief is respectfully requested.

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STATUS OF CLAIMS

Claims 1, 3-7, 14 and 15 are pending in the application.

Claims 2 and 8-13 have been canceled without prejudice or disclaimer, and are not the subject of this appeal. Additionally, claim 5 has been withdrawn, and is not the subject of this appeal.

Claims 1, 3, 4, 6, 7, 14 and 15 are pending and are the subject of this appeal.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Ground 1

Claims 7 and 15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Ground 2

Claims 1, 3, 4, 6, 7 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Woodward (U.S. Patent No. 5,312,040).

ARGUMENT

In addition to the arguments set forth in the Appeal Brief as filed on May 4, 2007, Appellants respond to certain points made in the Examiner's Answer as follows:

(A) On pages 8 and 9 of the Examiner's Answer the Examiner continues to assert that claims 7 and 15 are indefinite under 35 U.S.C. § 112, second paragraph. The Examiner asserts that the claims are indefinite because they lack sufficient structure.

Claim 7 recites that the "supply and stop of powder and granular material is controlled by a controller". Thus, claim 7 recites the structure of a controller and that the function of the controller is controlling and, particularly, controlling the supply and stop of powder and granular material. Appellants submit that this recitation is exceedingly clear and definite and properly recites both structure and the function of that structure. Furthermore, it is evident on its face that the structure of a *controller* can provide the function of *controlling*. Accordingly, Appellants reassert that claim 7 is definite.

Claim 15 recites that "the controller controls the supply and stop of powder and granular material by stopping and starting operation of a drive motor connected to the powder and granular material". Again, it is clear that a controller can provide control as claimed. Furthermore, in this case, the claim further recites the structure of a drive motor. The Examiner has failed to explain how this structure cannot provide the claimed function. Accordingly, Appellants also reassert that claim 15 is definite.

(B) On pages 9 and 10 of the Examiner's Answer, the Examiner maintains the rejection of claims 1, 3, 4, 6, 7 and 14 under 35 U.S.C. § 102(b) as being anticipated by Woodward (U.S. Patent No. 5,312,040).

As detailed at length in the Appeal Brief, the claimed invention is directed to an injection nozzle which mixes and injects a pressurized liquid and a pressurized gas. In contrast to the claimed invention, Woodward repeatedly and specifically discloses that the alleged injection nozzle 116/118 supplies either a pressurized liquid or a pressurized gas and not both at the same time. Particularly, the Woodward structure is specifically designed such that the pressurized gas

is fed to the nozzle 116/118 only when the water jetting operation is interrupted and pressurized liquid is vented away from the nozzle 116. This is the explicit and repeated disclosure of Woodward. Accordingly, Woodward does not include an injection nozzle as claimed.

In the Examiner's Answer, in direct contradiction to the explicit and repeated teachings of Woodward, the Examiner asserts that Woodward somehow does or could have a structure in which pressurized liquid and pressurized gas is mixed in the nozzle 116. Particularly, the Examiner now cites column 7, lines 49-51 and asserts that a malfunctioning Woodward device meets the claimed invention. (*see* page 9 of the Examiner's Answer). Yet, the clear and explicit teachings of Woodward contradict the Examiner's position. Column 7, lines 49-51 (the portion of Woodward cited by the Examiner) state that the "[w]ater jetting operations may become interrupted due to an arbitrary choice by the operator or by some unforeseen mechanical failure." Just three lines later, Woodward states that "[i]f the water jetting operation has become interrupted 138, then the high pressure fluid stream is diverted or vented through the dump valve 114 of the barrel" (*i.e.*, away from the nozzle 116/118). (*see* column 7, lines 54-57). Thus, Woodward teaches that whether the water jetting operation is interrupted due either to an arbitrary choice of an unforeseen mechanical failure (the Examiner's asserted malfunction) the result is the same → the high pressure fluid stream is diverted away from the nozzle 116. Thus, Woodward teaches that pressurized gas is directed to the nozzle 116 only when the water jetting operation is interrupted and that whenever the water jetting is interrupted, water is diverted away from the nozzle 116. Since Woodward discloses a structure which specifically avoids mixing pressurized liquid and gas in the injection nozzle 116, it clearly does not teach the structure of an injection nozzle which mixes and injects a pressurized liquid and a pressurized gas in combination with the other features as claimed.

Furthermore, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.¹ That

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

single prior art reference must show the identical invention in as complete detail as is contained in the claim.² Further, that single prior art reference must show the elements in the arrangement as required by the claim, even though identity of terminology is not required.³ In this case, Woodward specifically and repeatedly discloses a structure which is different than the claimed invention. Indeed, even the Examiner acknowledges that the explicit and literal disclosure of Woodward does not meet the claimed invention. (see page 10 of the Examiner's Answer). Yet the law requires that the rejection be based upon the explicit and literal disclosure of Woodward. Accordingly, based upon the correct standard of the law, even the Examiner agrees that Woodward does not anticipated the claimed invention.

The Examiner's maintenance of the rejection is based on improper speculation and has no basis in the law. Woodward repeatedly teaches a structure that functions in a particular way (where the pressurized liquid and pressurized gas do not mix in the injection nozzle), even in the event of a mechanical failure. Nevertheless, the Examiner's essentially argues that somehow Woodward could become broken such that it would have a different structure that it would cause it to function improperly and differently than as clearly disclosed in the Woodward reference. The Examiner then asserts that this broken and malfunctioning Woodward device would anticipate the claimed invention. There is simply no legal basis for such a rejection. The rejection must be based on Woodward as it actually is, not upon a malfunctioning device which is essentially different than the device disclosed in Woodward.

One can imagine rejections based upon the Examiner's line of reasoning:

"Although the claimed invention recites a straight part and the prior art reference specifically teaches a bent part, one of ordinary skill in the art would understand that if the prior art reference device were dropped on a hard surface its straight part might become bent. Accordingly, the claimed invention is anticipated."

² *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

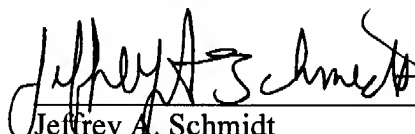
³ *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

The reasons for maintaining the rejections presented in the Examiner's Answer have no less basis in the law than this example. Accordingly, Appellants respectfully request that this rejection be reversed.

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,


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